IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 5455 of 2005

Between:

1 The Director General and Inspector General of Police AP, Hyderabad.
2 The Special Inspector General of Police, A.P. Special Police Battalion, Hyderabad.
3 The D.I.G of Police A.P. Special Police battalion, Hyderabad
HAC of Commandant, 8th APSP, Kondapur.
4 The Commandant 8th Battalion A.P. Special police
Kondapur, Ranga Reddy District.
5 The Deputy Inspector General of Police APSP 8th Battalion Hyderabad.

..... PETITIONERS

AND

Sri P.V.Babu Rao, S/o. Sri Surya Prakash Rao (Late)
VIII Battalion, A.P. Special Police, Kondapur, Ranga Reddy District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or direction, more particularly one in the nature of writ of Certiorari calling for the records connected with order dt.23.11.2004 in OA No.3038/2004 on the file of the APAT, Hyderabad and to quash the same as erroneous and contrary to law and pass such other orders.

Counsel for the Petitioners: GP FOR SERVICES I

Counsel for the Respondent: MR.Y.S.VENKATA RAO

The Court made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed by the Government assailing the order, dated 23.11.2004, passed by the A.P. Administrative Tribunal in O.A.No.3038 of 2004.

2. The respondent is the applicant before the Tribunal. He was working as Inspector of Special Police in the APSP, Kondapur. While so, he was unauthorisedly absent from 30.10.1997, and thereafter, he did not return back to the duty.

3. In the meanwhile, it is the case of the department that a sum of Rs.96,265=25Ps was entrusted to him for disbursement towards the arrears of increments and other benefits of the employees. Since, he did not return back to the duty, the family members of the applicant deposited a sum of Rs.30,000/-. Thereafter, charge memo, dated 09.07.1998, was issued to the respondent and also a criminal case was filed against him. An *ex parte* enquiry was conducted and ultimately the respondent was dismissed from service vide proceedings RO.No.194/99 (Rc.No.1290/A3/97), dated 10.05.1999. According to the department the charge memo and the order of dismissal were pasted on the door of his quarter at Kondapur. However, the respondent appeared before the authorities on 27.06.2002 with medical certificate and sought for reporting duty. But having come to know that he was already dismissed from service, he filed an appeal before IGP APSP, Hyderabad and the same was rejected vide proceedings No.242/02 (No.79/APPLICANT/A3/02), dated 07.10.2002. Thereafter, the respondent filed a revision and the same was also rejected on 26.02.2003, and thereupon, he filed O.A. before the Tribunal challenging the order of dismissal.

4. The learned Tribunal, after considering the matter, allowed the O.A. holding that

the action taken by the department was not in accordance with the Rules and set aside the order of dismissal and directed the authorities to conduct enquiry and pass appropriate orders. The said order came to be challenged in the present Writ Petition.

5. Learned Government Pleader submits that the findings recorded by the Tribunal are wholly misconceived inasmuch as proper steps were taken to serve the charge memo and the order of dismissal on the respondent, and therefore, the Tribunal ought not to have found fault with the action taken by the department against the respondent. The Tribunal wholly misconstrued the entire scope of the departmental enquiry and rendered an erroneous decision.

6. Per contra, the learned counsel for the respondent submits that there was no proper service of charge memo and notice of enquiry etc. They were posted by the department only to the native address, but not to the residential address at Kondapur and nothing could have prevented the authorities to send the same by registered post with acknowledgement due. On the other hand, the Tribunal also found that the notice was not published in the gazette or in press. Under those circumstances, the Tribunal found fault in the procedure adopted by the department, and therefore, gave an opportunity to the department to conduct fresh enquiry after giving proper notice to the respondent. Hence, the order of the Tribunal cannot be said to suffer from any illegality.

7. We have heard the learned counsel for the parties.

8. In the instant case, the respondent appears to have been unauthorisedly absent from 30.10.1996 and thereafter, a charge memo was issued and also a criminal case was filed. However, it is found that the charge memo was sent to the native address of the respondent, but it was not sent by registered post to his residential address at Kondapur. The department has come up with a plea that the charge memo and the dismissal order were pasted on the door of the quarter of the respondent at Kondapur, and therefore, the question that calls for consideration is whether any

proper opportunity was given or not and whether the enquiry was conducted in a proper manner. This aspect was considered by the Tribunal in Para Nos.13, 14 and 15 which are extracted below:

> "13. Coming to the issue of absence of the applicant from duty, no doubt the applicant filed the certificates issued by the Civil Surgeon of the Osmania General Hospital as well as Gandhi Hospital. But, however, the RMO has issued physical fitness certificate on 25.6.2002. The applicant reported to duty on 26.6.2002 with these certificates. In all fairness, as the physical fitness certificate was filed, he could have been given posting orders before his retirement on 30.6.2002 and allowed to retire on superannuation. However, this was not done. The medical certificates were not even referred to the Medical Board when the same were disbelieved by the respondents. Thus, in the face of the medical certificates filed by the applicant, which were not held as false, necessarily, it is to be held that the applicant suffered from the ailments referred to therein in the medical certificates which include mental depression. The very fact that the whereabouts of the applicant were not known to him his family members also was admitted in the counter, which leads to the strong presumption that the applicant suffered from mental depression. Because of this, there is no evidence to establish that the applicant was unauthorisedly absent without justification. For this reason, the first article of charge necessarily has to be held as not proved.
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> 14. Coming to the issue of misappropriation, it is not in dispute that the applicant had drawn an amount of Rs.96,265-25 ps. The applicant himself admitted in his representation to the IG of police stating that the entire balance of amount due from him, is his own responsibility to repay the balance amount and the same could be recovered from the pensionary benefits. On this count also, the enquiry was held and the applicant was held as ex-parte. While dealing with such serious charge of misappropriation, which involves criminal intention on the part of the employee, every action should be taken to establish that the rules have been strictly adhered to. If the respondents could not trace the applicant, nothing prevented them from serving the articles of charges by substitute service either by pasting the same at the door of the last residence of the applicant and in this case, the family of the applicant was

residing in the Quarters of the APSP. Substitute service namely publishing the articles of charges in the Gazette was also not done by the respondents. Not even, it was averred in the counter that such a step was taken. In the absence of this, in the light of the medical certificates filed by the applicant, it is necessarily to be held that the applicant is not aware of the charges nor of the disciplinary proceedings initiated against him. Thus, the applicant cannot be said to have avoided the enquiry and on the other hand, it could be positively held safely that the enquiry is not conducted in accordance with the rules. It is not a question of number of witnesses that were examined, but a question of giving an opportunity to the applicant to defend himself, which is to be considered. In view of this, ex-parte enquiry conducted and the conclusions drawn thereupon due to which finally, the impugned orders issued have to be necessarily held as invalid and they are liable to be set aside and accordingly, they are set aside. Consequent upon setting aside the dismissal orders of the applicant, the orders of the higher authorities, namely orders passed by IG of Police and Additional DG of Police rejecting the appeal as well as revision petition of the applicant are also set aside.

15. However, in the light of the submissions made by the counsel for the applicant, the respondents are at liberty to give fresh opportunity to the applicant to answer the allegations made against him by serving fresh charge memo, if they so desire, and in the meanwhile release the provisional pension of the applicant to extent of 75%, within a period of 3 months duly recovering amount if any due from him, admitted by him, before the Inspector General of Police himself. This is, however, without prejudice to subject to any orders issued in proceedings taken against him in the TDP death with in TEC No.9/97."

9. As can be seen from the findings of the Tribunal that no proper opportunity was given to the respondent at all and the department has not taken appropriate measures to see that the orders are passed after following the rules. Under those circumstances, the Tribunal only directed the authorities to conduct fresh enquiry by giving an opportunity to the respondent. Thus, it cannot be said that the authorities are denuded from taking action according to Rules. Under those circumstances, we

do not find any ground to interfere with the order of the Tribunal.

10. Accordingly, the Writ Petition is dismissed. No costs.

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G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 01.04.2005

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To

1 The Director General and Inspector General of Police AP, Hyderabad.
2 The Special Inspector General of Police, A.P. Special Police Battalion, Hyderabad.
3 The D.I.G of Police A.P. Special Police battalion, Hyderabad
HAC of Commandant, 8th APSP, Kondapur.
4 The Commandant 8th Battalion A.P. Special police
Kondapur, Ranga Reddy District.
5 The Deputy Inspector General of Police APSP 8th Battalion Hyderabad.

6 The Registrar, A.P. Administrative Tribunal, Hyderabad.

7 2 CCs to the G.P. for Services-I, High Court of A.P., Hyderabad (OUT).

8 2 CD copies

9 1 CC to MR.VENKATA RAO